under section 310 Criminal Procedure Code and alter the finding on the first charge by substituting a conviction under paragraph (a) for the conviction under paragraph (b).

The Order will be :—

(1) That on the first charge a conviction under paragraph (a) of section 7 of the Proclamation be substituted for the conviction under paragraph (b);

(2) That the convictions on charges 2 and 3 are upheld;

(3) That the sentence on all three charges are maintained.

Order Accordingly.

KUI TEONG v. REX
and
LEE KENG KEH v. REX.

[Criminal Revision (Worley, J.) October 9, 1946]

Municipal Ordinance (Cap. 133) Section 195 (4) (a) and (b)—Hawking in a Prohibited area—Hawking without licence—Whether a person can be convicted of both offences—Itinerant hawker—Forfeiture of goods under Section 195 (6) (c) Cap. 133—Magistrate must make an order as to disposal of property—Criminal Procedure, Sections 310 and 322 (1).

In these cases the two accused were each charged on 2 charges (1) Hawking in a prohibited area in North Bridge Road, an offence under Section 195 (4) (b) of Chapter 133 and (2) Hawking without a licence, an offence under Section 195 (4) (a) of Chapter 133. The accused pleaded guilty and on conviction were each fined $25.00 "on both charges". The Magistrate also made an order for the confiscation of the case property. The accused petitioned to the Supreme Court for revision.

Held, (1) that the Magistrate had made an error in imposing one fine jointly for two separate offences and that the fine must be altered to one of $12.50 for each offence;

(2) that Section 195 (4) of the Municipal Ordinance authorises the prosecution of an unlicensed hawker who acts as an itinerant hawker in a prohibited area under both clauses of the action;

(3) that although the charges in this case speak only of "hawking" and do not include the word "itinerant" which is used in Section 195 (4) of the Municipal Ordinance, they were sufficient to give the accused exact notice of the offences with which they were charged, as the definition of the word "hawker" implies itinerancy;

(4) that when a Magistrate decides to exercise the power of forfeiture under Section 195 (6) (c) of the Municipal Ordinance, he should first inquire what is the nature and value of the goods which he is asked to forfeit and he should make some record of these facts, so that if necessary, the Court of Appeal or the Court acting in revision can judge whether, in all the circumstances, the forfeiture is reasonable;

(5) that the Magistrate should, after making the order confiscating the property, make an order for its disposal and as he had not done so in this case, an order should be made that the property forfeited be sold and the proceeds be divided equally between the Municipal Fund and the accused.

Cases referred to :

(1) *Cheah Boon Hean v. Reg.* 1 S.L.J. 64

(2) *Opium Farmer v. Chua Ah Tong,* 4 Kyshe 188.

(3) *P. P. v. Chean Tin* (1939) 8 M.L.J. 266.

CRIMINAL REVISION.

Mark Morrison for Petitioners.

A. W. Bellamy for the Crown.

Worley, J. in an oral judgment said :—Mr. Morrison for the petitioners has contended that the maximum penalty prescribed for an offence should never be imposed in the case of a first offence and has referred me to the case of *Cheah Boon Hean v. Reg.*[1]

I do not think this Court can so limit the discretion given by the law as to say that a maximum fine should never be imposed for a first offence. It is quite true that it is not as a rule imposed in such a case but, if the circumstances justify it, then this Court, I conceive, will not interfere. In this case, the Magistrate in his grounds of judgment, has shown that he considered the matter judicially and reasonably. He states that he has regularly imposed the maximum fine of $25/- and it has not proved a sufficient deterrent. In these circumstances it would be quite wrong for me to say that he was wrong in imposing the maximum fine. In fact, however, he did not do so and Mr. Morrison misunderstood the order made.

But the Magistrate has made an error in imposing one fine jointly for two separate offences and I think reading section 322 (1) with section 310 it is competent for me to correct that and to alter his order into a fine of $12.50 for each offence. *Opium Farmer v. Chua Ah Tong*[2].

The next point taken by the petitioners was that they had been convicted on two separate charges in respect of one act.

I think the section under which these petitioners were charged does authorise the prosecution of an

unlicensed hawker who acts as an itinerant hawker in a prohibited area under both clauses of the section. It cannot be suggested that in this case there was any hardship because in fact the petitioners were only fined the maximum penalty under one of the charges.

Then it was alleged that the petitioners were charged with and convicted of offences which are unknown to the law of the Colony. I cannot see that there is any substance in this point or that the charges were not sufficient to give the petitioners exact notice of the offences with which they were charged. They were charged with hawking in a prohibited area and with hawking without a licence. To hawk is to act as a hawker and I do not know that it is in every case necessary to follow the exact words of a section in order to give sufficient notice. One must realise that charges of this nature are brought in magistrates' courts by the hundred and I can see nothing wrong in shortening the words of the charge provided that the abridged wording gives sufficient notice of the offence charged. Nor do I think there is any substance in the point taken that to hawk or to act as a hawker is not the same thing as being or acting as an itinerant hawker. Webster's dictionary defines a hawker as one who sells wares from place to place or by crying them in the street. That definition implies the element of itinerancy. The definition in the Municipal Ordinance section 195 (7) is much the same; there an itinerant hawker is defined as any person who with or without a barrel, cart, bicycle or tricycle goes from place to place or to other persons' houses carrying to sell etc. goods of any kind and I think the word "Itinerant" in the section is surplusage. So far as concerns those points, I see no reason to interfere with the orders made by the Magistrate.

The only other point is the question of forfeiture of the goods under section 195 (6) (c). There is no dispute that the Magistrate is empowered to forfeit these goods if he thought fit and proper and in the grounds of judgment he has shown that this forfeiture was made after consideration and on reasonable grounds. Representations had been made to him by the Police that even the imposition of the maximum fine has not been a sufficient deterrent to unlicensed hawkers and for that reason he was asked and decided to bring into play a stronger deterrent by exercising his power of forfeiture. That, I think, was quite a reasonable and proper use of his power, but I do think that when a Magistrate decides to exercise this power of forfeiture, he should first inquire what is the nature and value of the goods which he is asked to forfeit and, as was pointed out in *P. P. v. Chean Tin*[3], he should make some record of these facts so that, if necessary, the Court of Appeal or the Court acting in revision can judge whether, in all the circumstances, the forfeiture is reasonable. I think Mr. Bellamy is right in maintaining that an order of forfeiture must be for the whole of the property. The section does not permit the Magistrate to say, "I will forfeit a portion of the property seized", and that is an additional reason why he should take care to ascertain the value of the property forfeited In this case there is nothing to show that the Magistrate did make any such enquiry so that it is quite impossible to know whether he fully appreciated the extent of the penalty that he was inflicting on the petitioners.

There is a further point that although he made an order confiscating the property, he did not go on as he should have done under the section to make an order for its disposal. That being so, I think that I can, acting under the sections of the Criminal Procedure Code which I have previously referred, make good the omission and exercise the powers under subsection (6) (c) of section 195 for the disposal of the property.

The Magistrate has shown good grounds for exercising his power of forfeiture, but it has not been shown that he realized the severity of the penalty. It may be that if he had realized the value of the goods, he would have exercised powers under the proviso and ordered the goods to be sold and the proceeds divided proportionately between the Municipal Fund and the owner. In making good his omission to dispose of the property, I think I can properly on the facts before me exercise a discretion under the proviso. I therefore confirm the orders of forfeiture and order that the property forfeited be sold and that the proceeds of sale be divided in equal shares between the Municipal Fund and the owner in each case so that the order on each petition will be :—

(1) The convictions are confirmed.

(2) Sentence of fine varied to a fine of $12.50 on each charge.

(3) Order of forfeiture confirmed.

(4) Order that the property forfeited be sold and the proceeds be divided equally between the Municipal Fund and the petitioner.

Order Accordingly.